17962





THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

FILE: B-195692

DATE:

May 5, 1981

MATTER OF: United States Government Printing Office /

Security Police Employees

DIGEST:

Security police employees of the United States Government Printing Office who, as a result of their work schedule, must acquire their uniforms during their off-duty hours are not Entitlemententitled to overtime compensation for the time spent in acquiring their uniforms). The time involved does not constitute "overtime work" for the purposes of 5 U.S.C. § 5544 (1976). In addition, the time spent by the employees is not compensable as overtime

hours worked under the Fair Labor Standards

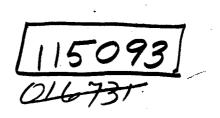
Act, 29 U.S.C. § 201 et seq.

The issue in the present case is whether security police employees of the United States Government Printing Office (GPO) are entitled to receive overtime compensation for off-duty time spent acquiring uniforms prescribed by the GPO to be worn in the performance of official duties. For the following reasons, there is no basis to pay the employees overtime compensation under either 5 U.S.C. § 5544 (1976) or the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. § 201 et seq. (1976).

The question was presented by Vincent T. McCarthy, Esq., General Counsel, United States Government Printing Office.

Prior to January 1979, GPO security police employees were paid a uniform allowance in accordance with 44 U.S.C. § 309(a) and 5 U.S.C. § 5901. Each employee then purchased his/her uniform from private vendors on off-duty time without compensation. Subsequently, the GPO standardized its uniforms with those of the General Services Administration (GSA). In connection with this, GPO entered into an arrangement with the GSA whereby the GPO security police uniform items could be obtained from the GSA store in Bladensburg, Maryland.

The GSA store is open Monday through Friday from 7:30 a.m. to 4 p.m. Since the store operates only during



these days and hours, GPO allows its day-shift security police employees to acquire uniform items during their regular working hours. The night-shift employees, on the other hand, must acquire their uniforms during their off-duty hours. However, all of the security employees are on rotating shifts which rotate on a regular basis. Thus, all of the security employees are, at some time, on the day shift and as such are entitled to receive administrative leave to acquire uniform items during this time. The employees' union, Local 2738 (American Federation of Governmental Employees), asserts that the night-shift employees are entitled to be paid for the time they spend including traveltime acquiring their uniforms.

We have been informed that the security police are general graded employees and are paid under the provisions of 44 U.S.C. § 305, commonly referred to as the Kiess Act. As such, the payment of overtime compensation to these employees is governed by the provisions of 5 U.S.C. § 5544. See B-191619, May 9, 1978, and cases cited therein. Section 5544 provides, in pertinent part, as follows:

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week." (Emphasis added)."

Thus, the question is whether the time spent obtaining uniform items outside regular working hours constitutes "overtime work" within the meaning of section 5544. Section 5544 does not fully set out the standards as to what constitutes compensable overtime work. However, the courts have applied essentially the same standards to determine whether certain types of

activities are compensable overtime work under 5 U.S.C. § 5544 and 5 U.S.C. § 5542 applicable to General Schedule employees. See Detling v. United States 432 F.2d 462 (Ct. Cl. 1970) and Rapp v. United States, 167 Ct. Cl. 852 (1964). The major factor considered by the courts is whether the time spent by the employee in performing the activity is predominantly for the employer's benefit. See Armour & Co. v. Wantock, 323, U.S. 126 (1944); Baylor v. United States 198 Ct. Cl. 331, 357 (1972); and Rapp v. United States, Supra. This determination depends upon the facts and circumstances of each case.

We do not consider the time spent by employees purchasing clothing to wear to work as hours of work so as to entitle the individual to overtime pay. There are a number of activities which an employee must undertake on his own time to prepare himself for work and for which he may not expect compensation. One of these tasks is for the employee to dress himself in the appropriate attire required by his job. In some circumstances this may require the purchasing of new clothing or, as in this instance, a new uniform. The fact that an employee must purchase his clothes in a specific store during limited hours does not alter the fact that by purchasing the clothing the employee is fulfilling his responsibility to be properly dressed for work. Thus, in these circumstances the time spent by these employees in purchasing their uniforms may not be viewed as time spent predominantly for the employer's benefit.

Therefore, the time spent by GPO security police employees in acquiring their uniforms is not considered "overtime work" for the purposes of 5 U.S.C. § 5544, and the employees are not entitled to receive overtime compensation for such time. Moreover, since the purchase of uniform items is not considered work, any travel which might be involved would not be considered work for purposes of paying overtime compensation.

In addition to being subject to the provisions of 5 U.S.C. § 5544, the security police employees of the GPO are also covered by the provisions of the Fair Labor Standards Act (Act). 29 U.S.C. § 203(e)(2)(A)(iii). The Fair Labor Standards Act requires payment of overtime for hours in excess of 40 hours per week, for all work which the employee performs. 29 U.S.C. § 207.

Under 29 U.S.C. § 204(f), the Office of Personnel Management (OPM) is authorized to administer the provisions of the Act with respect to most Federal employees. We requested OPM's opinion concerning payment of overtime compensation under the Act in this particular situation. We were advised that the time spent by these employees acquiring their uniforms is not considered to be compensable hours worked under the Act. We agree with this opinion.

Accordingly, since the off-duty time spent by the employees acquiring their uniform items does not satisfy the requirements of either 5 U.S.C. § 5544 or the Fair Labor Standards Act for payment of overtime compensation, the employees are not entitled to receive such compensation.

Acting Comptroller General of the United States